IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.213 OF 2002

IN

AWARD NO.L/40/2001/2002

Honesty Impex ...Petitioner.

vs.

Bharat Merchants' Chamber
and others. ...Respondents.

Mr.Shailesh Shah i/b. I.A. Nasikwala, for Petitioner.

Mr.S.K.Jain, for Respondent no.5.

CORAM: D.K.DESHMUKH,J.

DATED: 1st March, 2005.

P.C.:-

1. By this petition, the petitioner challenges the Award passed by the Arbitral Tribunal. According to the

learned Counsel, because the goods were found defective, the Respondent no.5 is not entitled to the full price of the goods. It is however, an admitted position that there was no warranty given by the respondent no.5 nor it is the case pleaded by the petitioner that either express or implied warranty was given by the respondent no.5. So far as reliance placed on the provisions of sub-section (2) of Section 16 of Sale of Goods Act are concerned, the averments that are necessary for attracting the provisions of sub-section (2) of Section 16 of Sale of Goods Act that 'the goods were sold by description and that the seller from whom the goods were purchased, deals in the goods of that description', are admittedly absent. In my opinion, in the absence of any pleadings, the petitioner can not claim that he was given implied warranty. The entire petition is misconceived. The petition is therefore, disposed of. There shall be no order as to costs.

2. The amount has been deposited by the petitioner in this Court pursuant to the order dated 7th July,2004 in Notice of Motion no.1912 of 2004 and Notice of Motion no.2187 of 2002. The Prothonotary and Senior Master of this Court shall permit the Respondent no.5 to withdraw the amount deposited after the expiry of period of Four

Weeks from today.

3. The Respondent no.5 shall appropriate that amount towards the satisfaction of the Decree in part.

1.3.2005 ----